

REMARKS

I. Status of the Application

Claims 1 and 2 are pending in this application. In the November 22, 2004 office action, the Examiner:

- A. Objected to claim 1 for an alleged informality;
- B. Rejected claims 1-2 under 35 U.S.C. § 112, second paragraph, as allegedly failing being indefinite; and
- C. Rejected claims 1-2 under 35 U.S.C. § 101 as allegedly failing to be directed to statutory subject matter; and
- D. Rejected claims 1-2 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,809,484 to Mottola (hereinafter "Mottola").

In this response, claim 1 has been amended to further particularly point out and distinctly claim the inventive subject matter. New claims 3 and 4 have been added. Applicants respectfully traverse the rejections of claims 1-2 in view of the foregoing amendments and the following remarks.

II. The Declaration Filed December 21, 2001 Was Signed by Todd O. Perry

The Examiner alleged that the Declaration on file was not signed by the inventor Todd O. Perry. It is respectfully, submitted, however, that the Declaration as filed on December 21, 2001 was signed by Todd O. Perry. Regardless, a copy of the Declaration filed on December 21, 2001 is provided herewith. Accordingly, it is respectfully

submitted that the requirement of a Declaration signed by Todd O. Perry is satisfied by this filing.

III. The Objection to Claim 1 is Moot

The Examiner objected to claim 1 because of an informality. In the objection, the Examiner suggested an amendment that would address the informality. Claim 1 has been amended as suggested by the Examiner. Accordingly, it is respectfully submitted that the objection to claim 1 is moot and should be withdrawn.

IV. The Indefiniteness Rejection Should be Withdrawn

The Examiner rejected claim 1 as allegedly being indefinite in using the word “substantially”. It is respectfully submitted that the term “substantially” is sufficiently definite as evidenced by its wide use in patent claims. Nevertheless, applicant has amended claim 1 to recite the term “approximately” instead of “substantially”. The Applicant considers such terms of equal scope, although applicant desires to select terminology the Examiner deems sufficiently definite. It is respectfully submitted that the indefiniteness rejection of claim 1 should be withdrawn in view of the amendments and the foregoing remarks.

V. Claims 1-2 Are Directed to Statutory Subject Matter

Claims 1-2 stand rejected as allegedly being directed to non-statutory subject matter. In particular, the Examiner stated that these claims “lack any recitation of

technology in the body of the claims, which is required in order to meet the statutory requirements.” (November 22, 2004 office action at p.3).

Claim 1 has been substantially amended to include a step in which a first processing circuit defines an asset value based on the prospective income of the performer. The processing circuit is shown, by way of non-limiting example, in Figs. 1 and 5.

In addition, the amendments are clearly supported by the application as filed at pages 5-6 and 20. Pages 5 and 6 describe an exemplary embodiment of a processing apparatus 10 that includes a processing circuit 12, a memory 18 for providing program instructions to the processing circuit 12, and an input 14 for receiving input used by the processing circuit 12. Page 20 teaches that the processing apparatus 10 may be used to carry out the analysis and valuation steps that are used to develop the security value.

Although applicant respectfully traverses the application of the ruling of *Ex parte Bowman* in this case or in any case, it is respectfully submitted that claim 1 now recites substantially amounts of technology in the body of the claim to satisfy the *Ex parte Bowman* standard. Thus, even under the Examiner’s application of *Ex parte Bowman*, claim 1 recites statutory subject matter.

Claim 2 depends from claim 1. Accordingly, claim 2 incorporates all of the limitations of claim 1. Because claim 1 recites sufficient technology to constitute statutory subject matter under *Ex parte Bowman*, claim 2, which includes the same recitation of technology, also constitute statutory subject matter.

For the foregoing reasons, among others, it is respectfully submitted that the rejection of claims 1-2 under 35 U.S.C. §101 is moot and should be withdrawn.

VI. The Rejection of Claim 1 is in Error

In the November 22, 2004 office action, the Examiner alleged that claim 1 was anticipated by Mottola. For reasons discussed below in detail, it is respectfully submitted that Mottola fails to teach or disclose each and every element of claim 1, as amended.

A. The Present Invention

Claim 1, as amended, is directed to a method that includes a step of employing a first processing circuit to define an asset value based on the prospective income of the performer. The asset value defines a security value. The method also includes defining a minimum acceptable final valuation and establishing a first account. The method further includes receiving into the first account funds in an amount approximately equal to or greater than the minimum acceptable final valuation, wherein these funds result from sale proceeds of security instruments. The security instruments have a value based on the asset value. As amended, the method also includes making excess funds available to the performer, said excess funds including sale proceeds that exceed the minimum acceptable final valuation.

In other words, a minimum final valuation amount is taken from sale proceeds of security instruments and placed into a first account. An amount of those sale proceeds in excess of the minimum final valuation is made available to the performer.

Thus, the security instrument is created that both provides immediate access to funds to the performer while also protecting the investors by protecting a minimum final valuation amount.

B. Mottola

Mottola is directed to method for administering a plan for funding investments in education. The education investment plan includes a unit investment trust for financing the educations of a predetermined number of students in preselected fields of study. The method allows investors to invest in students' future income streams to be earned upon graduation. Prospective investors are given projected incomes for particular professions and schools for a particular offering. Investors may then participate in the offering until a pool of money is raised. Thereafter, student investees are selected to participate by pledging portions of future income against the money raised by the offering. The money raised by the offering is used to pay for the students' education.

C. Mottola Fails to Disclose Retaining a Minimum and Making the Excess Available to the Performer

Mottola does not teach or suggest a step of receiving into the first account funds in an amount approximately equal to or greater than the minimum acceptable final valuation, and making any excess available to the performer. In other words, Mottola does not teach retaining at least some of the initial investment by the investors to establish a minimum acceptable final valuation, while making excess funds available for use by the performer.

Instead, Mottola places all sale proceeds in a trust for a plurality of students, and then lets the students use money as needed for tuition and other educational expenses. There is no minimum balance retained in the trust that represents a minimum final

valuation. All of the money invested is to be used for educational costs, with replenishment later from incomes of graduated students.

In the rejection of claim 1, the Examiner cites column 15, lines 1-23 of Mottola as potentially defining a minimum final valuation. (November 22, 2004 office action at p.4). However, column 15 does not discuss defining a minimum final valuation that is to be retained from the initial investment proceeds. Instead, column 15 of Mottola discusses payment into an account from the realized income streams of the graduated students. Column 15 of Mottola does not teach retaining some the initial investment proceeds to cover a minimum final valuation. In fact, no such protections are provided in Mottola.

Accordingly, for at least these reasons, it is respectfully submitted that the rejection of claim 1 over Mottola is in error and should be withdrawn.

VII. Claim 2

Claims 2 also stands rejected as allegedly being anticipated by Mottola. Claim 2 depends from and incorporates all of the limitations of claim 1. Accordingly, for at least the same reasons as those set forth above in connection with claim 1, it is respectfully submitted that the rejection of claim 2 over Mottola should be withdrawn.

VIII. New Claims 3 and 4

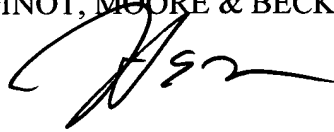
New claims 3 and 4 depend from and incorporate all of the limitations of claim 1. Accordingly, for at least the same reasons as those set forth above in connection with claim 1, it is respectfully submitted that claims 3 and 4 are allowable over the prior art.

IX. Conclusion

For all of the foregoing reasons, it is respectfully submitted the applicants have made a patentable contribution to the art. Favorable reconsideration and allowance of this application is, therefore, respectfully requested.

Respectfully Submitted,

MAGINOT, MOORE & BECK

A handwritten signature in black ink, appearing to read 'H. Moore', written over the firm name.

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Enclosures